*** HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA**

+Writ Petition No.12102 of 1998

%Dated 11.06.2007

Ferro Alloys Corporation Limited, rep.
by its Laison Officer, Sri M.R.P. Prasad,
Hyderabad

… Petitioner

VERSUS

$ 1. Government of A.P.,
represented by its Principal Secretary,
Revenue (Registration-II) Department,
Secretariat, Hyderabad

2. The Inspector General of Registration
and Stamps, Government of A.P.,
Hyderabad …
Respondents

! Counsel for Petitioner: Sri Ganta Rama Rao

^Counsel for Respondents: Government Pleader for Revenue

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? Cases referred

HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.12102 of 1998

Dated 11th day of June, 2007

Between:

Ferro Alloys Corporation Limited, rep.
by its Laison Officer, Sri M.R.P. Prasad,
Hyderabad .. Petitioner

And

The Govt. of A.P. rep. by its
Principal Secretary, Revenue
(Registration –II) Department,
Secretariat, Hyderabad
and another .. Respondents

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O R D E R:

This writ petition is filed seeking a mandamus to declare the Memo No.4215/Regn.II/97-7, dated 6.8.1997 issued by the 1st respondent as arbitrary and illegal, and consequently direct the respondents to refund the stamp duty of Rs.3,00,000/- paid by the petitioner.

The case of the petitioner in brief is that the 1st respondent issued G.O.Ms.No.750 dated 22.12.1995 amending Clauses 1 and 3 of the orders issued in G.O.Ms.No.912, dated 20.9.1974 by substituting the following:

1) *Unattested instrument evidencing an agreement relating to the hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of any existing or future debt – Duty Chargeable as mortgage under Article 35(b) of Schedule-IA to the Indian Stamp Act, 1899 is reduced to Rs.100/- upto the loan amount of Rs.30,000/- and thereafter subject to a maximum duty of Rs.1,00,000/-.*

2) *Attested instrument evidencing an agreement relating to the hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan – Duty chargeable as mortgage under Article 35(b) of Schedule-IA to the Indian*

Stamp Act, 1899 is reduced to Rs.100/- upto the loan amount of Rs.30,000/- and thereafter subject to a maximum duty of Rs.1,00,000/-.

The petitioner, on 12.2.1996, entered into three agreements such as (1) for export credit agreement to an extent of Rs.1,66,25,000/- on hypothecation of all the goods meant for exporting as security (2) for charge and hypothecation of debt agreement to an extent of Rs.2,98,75,000/- and (3) for hypothecation of goods and monies receivable agreement to an extent of Rs.2,98,75,000/-. The petitioner was compelled to affix stamp duty of Rs.3,00,000/- by virtue of G.O.Ms.No.750. Subsequently, the 1st respondent issued G.O.Ms.No.189 dated 16.2.1996 cancelling the orders issued in G.O.Ms.No.750 and making the following amendment to Clauses 1 and 3 of the orders issued in G.O.Ms.No.912.

1) *Unattested instrument evidencing an agreement relating to the hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of any existing or future debt – duty chargeable as mortgage under Article 35(b) of Schedule-IA to the Indian Stamp Act, 1899 subject to a maximum of Rs.5.00.*
2) *Attested instrument evidencing an agreement relating to the hypothecation of movable property where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan – Duty chargeable on similar instruments evidencing an agreement relating to deposit of title deeds, pawn or pledge under Article 7 of Schedule-IA to Indian Stamp Act, 1899.*

After coming to know about the issuance of G.O.Ms.No.189, the petitioner submitted a representation to the 1st respondent on 11.3.1996 stating that he was compelled to pay a stamp duty of Rs.3,00,000/- under G.O.Ms.No.750 which was subsequently cancelled, as such, he requested for refund of the amount of Rs.3,00,000/-. The 1st respondent-Government issued a letter dated

27.7.1996 merely informing that the petitioner is not entitled to the refund of stamp duty and it did not assign any valid reasons for non-refund of stamp duty. Aggrieved by the same, when the petitioner filed W.P.No.24382 of 1996, this Court allowed it on the ground that the letter dated 27.7.1996 is totally vague as it does not disclose any reasons and set it aside and remitted the matter to the 1st respondent for reconsideration. Now, the grievance of the petitioner is that the 1st respondent issued the impugned Memo dated 6.8.1997 refusing to refund the stamp duty paid by him and stated that G.O.Ms.No.189 does not have any retrospective effect.

The respondents have filed counter affidavit denying various contentions made by the petitioner and *inter alia* stated that the petitioner's request for refund of stamp duty was not accepted by the Government as it is not admissible as per the rates of the stamp duty in force as on the date of execution of the instruments. The unattested agreement executed between 22.12.1995 and 16.2.1996 attracts stamp duty under G.O.Ms.No.750 i.e. all the agreements evidencing hypothecation of movable property have to be stamped at Rs.100/- upto a loan amount to Rs.30,000/-, and thereafter, at the rate of 3% subject to a maximum duty of Rs.1,00,000/- depending on the loan amount. These rates of stamp duty were in force between 22.12.1995 and 16.2.1996. The agreement over which Rs.3,00,000/- stamp duty was paid by the petitioner was executed on 12.2.1996, and therefore, the above rates of stamp duty have to be paid by the petitioner.

The main contention of Sri Ganta Rama Rao, learned counsel for the petitioner, is that the purport of G.O.Ms.No.189 is not a mere re-amendment to Clauses 1 and 3 of the orders issued in G.O.Ms.No.912 but cancellation of G.O.Ms.No.750. Hence, in the eye of the law, G.O.Ms.No.750 has no existence at any point of time, and as such, the amounts that were paid towards registration fees during the existence

of G.O.Ms.No.750 shall be refunded to the petitioner.

Of course, it is the contention of the learned Government Pleader for Revenue that originally G.O.Ms.No.912 was amended on 22.12.1995 by introducing G.O.Ms.No.750, and thereafter, G.O.Ms.No.750 was amended on 16.2.1996 by introducing G.O.Ms.No.189, and hence, it cannot be treated as though G.O.Ms.No.750 was not at all in existence during the relevant period.

In the light of the rival contentions, the point that falls for consideration is whether G.O.Ms.No.750 was in existence from 22.12.1995 to 16.2.1996 on which day G.O.Ms.No.189 came into existence?

On an earlier occasion, when the Government refused to refund the stamp duty of Rs.3,00,000/- to the petitioner on three agreements dated 12.2.1996 executed by him, he filed W.P.No.24382 of 1996, and this Court, disposed it of on 3.4.1997 with a direction to the petitioner to make a further representation if he so chooses and the 1st respondent shall consider it and pass a reasoned order. Accordingly, on a representation made by the petitioner, the 1st respondent passed the impugned Memo simply observing that the amendment to the orders issued in G.O.Ms.No.912, dated 20.9.1974 by virtue of G.O.Ms.No.189 dated 16.2.1996, does not have any retrospective effect and the rates of the stamp duty notified in G.O.Ms.No.750 were in force between 22.12.1995 and 16.2.1996. Except stating that the said orders will not have any retrospective effect, the 1st respondent-Government has not stated anything as to how and why the petitioner is not entitled to the refund of stamp duty. On that score alone, this Court can remand the matter to the 1st respondent-Government for fresh consideration, but it will be a futile exercise, and hence, this Court is going into the merits of the case.

The Government, thought it fit to amend G.O.Ms.No.912 by

introducing G.O.Ms.No.750, according to which, the duty chargeable as mortgage under Article 35(b) of Schedule-IA to the Indian Stamp Act, 1899 is reduced to Rs.100/- upto the loan amount of Rs.30,000/- and thereafter subject to a maximum duty of Rs.1,00,000/-. Further, it also amended Clause 3 of G.O.Ms.No.912 to the effect that duty chargeable as mortgage under Article 35(b) of Schedule-IA to the Indian Stamp Act is reduced to Rs.100/- upto a loan amount of Rs.30,000/- and thereafter subject to a maximum duty of Rs.1,00,000/-. Further, for various reasons, the Government issued G.O.Ms.No.189 and re-amended Clauses 1 and 3 of G.O.Ms.No.912. The relevant purpose of issuing G.O.Ms.No.189 is not merely an amendment to Clauses 1 and 3 of the orders issued in G.O.Ms.No.912 but also rescending/cancelling G.O.Ms.No.750 From the wording used in G.O.Ms.No.189, i.e. "decided to cancel the said orders and to amend the orders in G.O.Ms.No.912", it is clear that G.O.Ms.No.750 is for all purposes cancelled. In the light of the words "decided to cancel", this Court is of the considered opinion that G.O.Ms.No.750 was not at all in existence at any relevant point of time.

In this context, it may be apt to refer to the dictionary meaning of the word "cancel". The Chambers Dictionary defines the word "cancel" as under;

"To annul or suppress; to revoke or discontinue; to abolish or call off; to counterbalance, compensate for or offset; to cross out or delete; to eliminate as balancing each other, eg. Equal quantities from opposite sides of an equation, common factors from numerator and denominator of a fraction; to mark or stamp to prevent reuse; to neutralize each other."

If the intention of the legislature is only to amend G.O.Ms.No.750, which amended the original orders issued in G.O.Ms.No.912, it would not have used the word "cancel". As the word "cancel" is used in G.O.Ms.No.189, this Court has to hold that

G.O.Ms.No.750 is not at all in existence. Otherwise, as was done while interpreting G.O.Ms.No.750, they would have simply stated that the following amendment to the orders issued in G.O.Ms.No.912 shall be published and they would have used further the word “substitute”, but in G.O.Ms.No.189, they have neither used the word “amended” nor “substituted” but used the words “decided to cancel the said orders”. For this reason also, this Court holds that G.O.Ms.No.750 is not at all in existence. When once G.O.Ms.No.750 is not in existence, it must be construed that in all the transactions that took place during the interregnum i.e. from 22.12.1995 to 16.2.1996 in terms of G.O.Ms.No.750, the excess amounts that were paid by the petitioner are to be refunded. Of course, it is the contention of the learned Government Pleader that if such a view is taken, the Government will be burdened with the refunding of excess amounts that were paid relating to various transactions that took place during the relevant period. I am unable to accept the said contention. When the Government’s intention is so clear that it is cancelling G.O.Ms.No.750, maybe it is true that it is a burden on the exchequer and the Government is duty-bound to refund the excess amounts that were paid.

In the result, this writ petition is allowed setting aside the Memo dated 6.8.1997 issued by the 1st respondent and the respondents are hereby directed to refund the excess amount paid by the petitioner on the three agreements that were registered on 12.2.1996. No costs.

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11.06.2007

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